

78THKARC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

07 Cr. 541 (RPP)

5 DANIEL B. KARRON,

6 Defendant.
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7
8 New York, N.Y.
9 August 29, 2007
10 4:20 p.m.

11 Before:

12 HON. ROBERT P. PATTERSON

13 District Judge

14 APPEARANCES

15 MICHAEL J. GARCIA

United States Attorney for the
Southern District of New York

16 CHI T. STEVE KWOK

Assistant United States Attorney

17 RON RUBINSTEIN

Attorney for Defendant

78THKARC

1 (In open court)

2 THE DEPUTY CLERK: United States v. Daniel Karron.

3 Is the government ready in this matter?

4 MR. KWOK: Yes, we are. Good afternoon, your Honor.

5 Steve Kwok for the government. With me at counsel table is
6 David Ton from the U.S. Department of Commerce and Matthew
7 Schwartz from our civil division.

8 MR. RUBINSTEIN: For the defendant, Ron Rubinstein.

9 Good afternoon, your Honor.

10 THE COURT: Good afternoon, Mr. Rubinstein and good
11 afternoon, Mr. Karron.

12 I think there was a letter that I received from the
13 government requesting the conference, am I right?

14 MR. KWOK: I don't know. We sent a letter, but we did
15 request a conference I think through a telephone call to the
16 deputy.

17 THE COURT: Have the parties been able to work out the
18 procedure so we can make sure we don't have any more legal time
19 or what have you in this matter than is necessary?

20 MR. KWOK: Well, I think we have moved closer since
21 last time we were in front of you. The government is trying to
22 be accommodating. So I think what we are proposing is to do
23 the search that the defendant is asking for. We simply insist
24 that it be done by a firm that is competent to conduct the
25 examination and the duplication in a way that is forensically

78THKARC

1 sound. I have suggested a name of that firm to defense counsel
2 and I have given him the web site. If that is satisfactory to
3 them, we are ready to have that firm be the intermediary to
4 duplicate the hard drives to get all the documents that
5 Mr. Karron claims are necessary for his defense.

6 I just want to put two things on the record to be
7 clear. First is, I think there is no dispute that the costs
8 would be on the defendant. I think last time they agreed with
9 that. The second is simply that whatever is duplicated the
10 government be provided a copy and be able to inspect the
11 documents as Mr. Karron will have a chance to once those copies
12 are provided to him.

13 With that, we simply again just want to make sure that
14 it is done in a proper way and we have an expert ready to go if
15 that is fine with the defense.

16 THE COURT: In a way that it protects the security of
17 the documents and in a way that Mr. Karron gets the information
18 he is seeking.

19 MR. RUBINSTEIN: Judge, I hate to waste the court's
20 time.

21 THE COURT: I just want to be sure you have a way to
22 do it.

23 MR. RUBINSTEIN: Apparently our ways to do it, my
24 recollection was that the government had given me one name and
25 said that they were going to have others and they were going to

78THKARC

1 bring an expert here for this conference to lay out to your
2 Honor what it entails so we can see, since the cost is going to
3 have to be borne by Dr. Karron, as to what we are talking
4 about. That is why I say to you I don't like to come to court
5 where the parties aren't on the same page.

6 It was my understanding Mr. Kwok was going to supply
7 us with a number of different experts so we can check out,
8 because we have our own experts that we would like to make
9 available and have our experts talking to the people that the
10 government suggests and work from there. I didn't know that
11 the one they suggested was the only one that was available.

12 MR. KWOK: If I may, your Honor, I just want to
13 clarify. We do have an expert --

14 THE COURT: Let me see if I haven't got the letter
15 here that I read. You ask for the conference to allow the
16 government expert knowledgeable about computer forensic
17 procedure to be present at the next status conference to answer
18 any questions I may have. But I don't have any questions.

19 My concern is one that the parties agree on a
20 procedure that will, one, be able to establish that whatever is
21 taken off the hard drive or software is taken from the
22 particular computers that belong to the defendant and be sure
23 that those documents are in fact documents that don't come from
24 some other place. That is what I want to be sure occurs.

25 MR. KWOK: Sure, your Honor. This is the expert that

78THKARC

1 I --

2 THE COURT: I am no computer expert.

3 MR. KWOK: He is the expert if the court has any
4 questions.

5 THE COURT: The expert is here, and I gather that
6 Dr. Karron is an expert or is very familiar with his computer,
7 computers, and I think he is an expert. I may be wrong.

8 THE DEFENDANT: Are you asking me?

9 MR. RUBINSTEIN: He built these computers.

10 THE COURT: So therefore, it seems to me that you
11 ought to be able to reach an agreement.

12 I don't want to put this matter over, Mr. Rubinstein,
13 because I have a two-week trial coming up starting Tuesday and
14 I am not going to be available for anything lengthy during that
15 period. I also happen to be the Part I judge. So I really
16 have my work cut out for me. I am trying to get relief on
17 that, but still there is a limit to my availability in this
18 time period.

19 So what is the matter with the proposal that Mr. Kwok
20 is proposing, that Mr. Karron designate the computers in
21 question and propose a method of obtaining the materials he
22 wants, he can search throughout them. There is no problem on
23 that as long as there is someone who can monitor that in fact
24 whatever he takes out are documents that were on the computer.

25 MR. RUBINSTEIN: We don't have a problem with that

78THKARC

1 aspect of it, Judge. As a matter of fact, I assured the
2 government that anything that was taken we would duplicate, it
3 would be duplicated, and we would only have a copy. We don't
4 want the original, so there is no question of the integrity of
5 whatever is taken.

6 The question was, they gave us the name of one firm.
7 It was my understanding -- maybe I misunderstood Mr. Kwok --
8 that there were other firms that could do this work, that they
9 were going to have their expert here, that they were going to
10 share with us the names of firms so that our experts could talk
11 to their experts and see -- first of all, there is possibly an
12 extraordinary cost involved here.

13 THE COURT: That was my next question. Are you
14 concerned that the government's expert is going to be so costly
15 that it is a problem as opposed to yours? Because if they go
16 around to three or four experts, it seems to me it takes time,
17 and why is it necessary to have more than one?

18 MR. RUBINSTEIN: Well, we want our expert to speak to
19 whoever it is that the government is suggesting and see if that
20 person could be involved in the process so we make sure of the
21 integrity of what is going on. So far they have given us the
22 name of one company.

23 THE COURT: All right. As long as that is what his
24 role is going to be and he agrees to those responsibilities,
25 why isn't that satisfactory?

78THKARC

1 MR. RUBINSTEIN: It is. I want the names of other --
2 they gave us one.

3 THE COURT: Why do we need more than one?

4 MR. RUBINSTEIN: Because that is what they told me
5 they were going to provide to me, so I can have the expert get
6 in touch with these people because I thought that there was
7 going to be a number of firms in the D.C. area, Washington,
8 D.C. area, who have the ability to do what we are attempting to
9 do.

10 THE COURT: Is everything down in Washington, D.C.?

11 MR. RUBINSTEIN: Yes.

12 MR. KWOK: Yes, it is. The computers are in D.C. and
13 the expert is in D.C.

14 If I may just clarify about the multiple experts. I
15 apologize to Mr. Rubinstein if I was unclear. We were going to
16 try to see whether we could get more than one after I sent him
17 the information on this particular expert, but according to our
18 government expert at the Department of Commerce, he wasn't able
19 to come up with more names that he could trust. Apparently it
20 is a small universe of people, and we just feel like since
21 this --

22 THE COURT: This is a man they have confidence in is
23 what he is saying. If they have confidence in this man, isn't
24 that satisfactory from your standpoint?

25 MR. RUBINSTEIN: If I knew that we were only going to

78THKARC

1 deal with one firm, I would have checked out that one firm. I
2 have been waiting for a list of firms so that we could do some
3 due diligence.

4 THE COURT: How long will it take you? Is the name
5 unfamiliar to you all? If it is, how long do you need to check
6 it out? Today is Wednesday. Can we do it by Friday? I hate
7 to put time pressures on you. If we can't, we can't.

8 MR. RUBINSTEIN: Judge, finding people this week is
9 not an easy thing to do.

10 THE COURT: All right. I will go along with that.
11 Let's check out this one and get back to me as to whether or
12 not it is not satisfactory to get ahead.

13 How long do you think it will take? Another week, ten
14 days?

15 MR. RUBINSTEIN: A week tops, your Honor. I am sure
16 everybody is back at work on Tuesday, the 4th. So I will be
17 ready by Friday, no later than Friday, a week from Friday,
18 which I think is either the 7th or the 8th.

19 THE DEPUTY CLERK: Friday, the 7th.

20 THE COURT: Yes. All you have to do is tell me it is
21 OK.

22 MR. RUBINSTEIN: Right.

23 THE COURT: If the two parties say it is OK, then --

24 MR. RUBINSTEIN: We need an estimate.

25 THE COURT: -- we have made progress.

78THKARC

1 MR. RUBINSTEIN: Good.

2 THE COURT: What sort of progress I don't know, but we
3 have made progress.

4 You better do it by letter, and also it would be good
5 if you give me a time frame for this to be completed because it
6 seems to me we ought to get it completed relatively promptly.
7 That just means you have to get your thoughts in order so that
8 you know -- I think Dr. Karron knows what he is looking for and
9 where he can find it in all likelihood, and I won't say he can
10 find it exactly because I don't know anything about finding
11 things on a computer or what system he used.

12 MR. RUBINSTEIN: Unfortunately, you can't Google this
13 stuff, your Honor, and that is the problem.

14 THE COURT: By then you ought to be able to give me a
15 time frame so that I can be assured that he has had access to
16 the documents he wants for his defense.

17 MR. RUBINSTEIN: Absolutely.

18 THE COURT: So give me a time frame so that I can mark
19 it on my calendar and we can have a conference about where we
20 stand on the discovery situation as soon as possible. You may
21 have motions to make. I don't know what you are going to have.

22 MR. RUBINSTEIN: Maybe the government has a
23 suggestion. They have talked to these experts.

24 THE COURT: I have to have some control. If I do not,
25 I am a delinquent judge. I don't want to be one of those yet.

78THKARC

1 MR. KWOK: Thank you, your Honor.

2 MR. RUBINSTEIN: I don't know if this is being
3 disrespectful, but this is the first time I ever remember you
4 not being on the bench exactly at the time-appointed hour. So
5 I don't know.

6 THE COURT: That is me being on the bench. What I
7 have got to do is be sure that you get a schedule and we get
8 this matter tried or disposed of.

9 A letter by next Friday, the 7th of September, and I
10 would hope that it wouldn't take you more than a couple of
11 weeks to complete your discovery.

12 MR. RUBINSTEIN: We will know from the experts, Judge,
13 but I will get working on it tomorrow.

14 MR. KWOK: Thank you, your Honor.

15 The last item on discovery, I just want you to know
16 that I will turn over supplemental discovery to the defendant,
17 since he asked for in his discovery letter previously, notes
18 from the CPA auditor. I asked my agents to go back to their
19 files to turn over every scrap of paper they have, and so I
20 intend to produce supplemental discovery to the defense.

21 THE COURT: All right. Thank you very much.

22 MR. KWOK: The only other item I think on the agenda
23 for the government is we want to apprise the court of a civil
24 complaint that the government will be filing, which is why I
25 have my colleague from the civil division here.

78THKARC

1 THE COURT: You filed a civil complaint in this
2 matter?

3 MR. SCHWARTZ: Yes. Good afternoon, your Honor.
4 Matthew Schwartz, also from the U.S. Attorney's Office.

5 We are intending to file a civil False Claims Act
6 complaint alleging essentially the same nucleus of facts in
7 this case. I wanted to put that on your Honor's radar screen
8 because we anticipate, unless we are able to come to some
9 agreement with Dr. Karron or Mr. Rubinstein, if he is retained
10 in the civil matter, injunctive relief in conjunction with our
11 civil complaint.

12 With your Honor's permission, we will mark the civil
13 action as related to this action so they could be consolidated
14 or at least dealt with by someone who knows the facts.

15 THE COURT: Well, I don't know about that. I have a
16 vague recollection that there is some suggestion by the Court
17 of Appeals that it is better not to handle both the civil
18 action and the criminal action at the same time. I have a
19 vague recollection that there is some sort of -- you can apply
20 for it, but that is my role, is to determine whether it is
21 appropriate for me to handle both the civil and the criminal.

22 MR. SCHWARTZ: That is absolutely our understanding as
23 well, that it is by no means mandatory that the two be
24 designated as related. But I think given the likely
25 proceedings in this case, especially the application for

78THKARC

1 injunctive relief we anticipate making, it makes sense. I
2 wanted to at least preface that issue so that when the civil
3 complaint comes your way, you are aware of it.

4 THE COURT: It may have to be assigned to another
5 judge. All right. You might tell me the case so I won't have
6 to look it up, too.

7 MR. SCHWARTZ: We will put in a letter with our
8 complaint, your Honor.

9 THE COURT: Thank you.

10 MR. KWOK: I don't know whether we have a control
11 date, but I just want to exclude time for discovery process.

12 THE COURT: Time is excluded certainly until September
13 21st.

14 MR. RUBINSTEIN: Thank you very much, your Honor.

15 MR. KWOK: Thank you, your Honor.

16 (Adjourned)

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